



July 26, 2000

Mr. James L. Hall  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342

OR2000-2841

Dear Mr. Hall:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137420.

The Texas Department of Criminal Justice (the "department") received a request for all infirmity and use of force records and information pertaining to a particular correctional officer for a specified time interval. You claim that the requested information is excepted from disclosure under sections 552.101, 552.107, 552.117, and 552.131 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.<sup>1</sup>

The disclosure of responsive medical records is governed by the Medical Practice Act (the "MPA"), as codified at subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. Section 159.002 of the Occupations Code provides in relevant part:

- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter . . . may not disclose the information except

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<sup>1</sup>We assume that the "exemplar" that the department submitted is truly representative of the requested information as a whole. This letter ruling neither addresses, nor authorizes the department to withhold, any information that differs substantially from the information that you submitted to this office. *See* Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). The MPA includes provisions that govern the disclosure of information that is within its purview. *See* Occ. Code §§ 159.003, 159.004, 159.005, 159.006. In construing the predecessor statute, this office held that in governing access to a specific subset of information, the MPA prevails over the more general provisions of chapter 552 of the Government Code.<sup>2</sup> Therefore, medical records contained in the requested information may be released only in accordance with the Medical Practice Act.

Section 552.131 of the Government Code relates to inmates of the department.<sup>3</sup> Section 552.131 provides in relevant part:

(a) Except as provided by Subsection (b) or by Section 552.029 [of the Government Code], information obtained or maintained by the Texas Department of Criminal Justice is excepted from [required public disclosure] if it is information about an inmate who is confined in a facility operated by or under a contract with the department.

Gov't Code § 552.131(a). Section 552.029 of the Government Code provides in relevant part:

Notwithstanding . . . Section 552.131, the following information about an inmate who is confined in a facility operated by or under a contract with the Texas Department of Criminal Justice is subject to required disclosure[:]

...

(8) basic information regarding the death of an inmate in custody, an incident involving the use of force, or an alleged crime involving the inmate.

Gov't Code § 552.029(8). Thus, the legislature explicitly made section 552.131 subject to section 552.029. Pursuant to section 552.029, "basic information" regarding an incident involving a use of force is subject to required disclosure. Gov't Code § 552.029(8). In this instance, the submitted information relates to a single incident that involved not only a use of force but also an alleged assault by an inmate on a correctional officer. Consequently, basic information about the use of force is subject to required disclosure under section 552.029(8). Additionally, if the assault on the correctional officer constituted an alleged crime involving

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<sup>2</sup>*See* Open Records Decision No. 598 (1991). The Seventy-sixth Legislature repealed the predecessor statute, article 4495b of Vernon's Texas Civil Statutes, in enacting the Occupations Code. *See* Act of May 13, 1999, 76<sup>th</sup> Leg., R.S., ch. 388, §§ 6, 7, 1999 Tex. Gen. Laws 1431, 2439-40. As the enacting legislation was a non-substantive codification, interpretations of the predecessor statute retain their relevance.

<sup>3</sup>As of the date of this letter ruling, four different sections of the Act were denominated as section 552.131. Sections 552.131 and 552.029, relating to inmates of the department, were added to chapter 552 of the Government Code by the Act of May 26, 1999, 76<sup>th</sup> Leg., R.S., ch. 783, §§ 1, 2, 1999 Tex. Gen. Laws 3407-08.

an inmate, basic information about that aspect of the incident also is subject to public disclosure under section 552.029(8). Basic information that is subject to disclosure under section 552.029(8) includes the time and place of the incident, the names of inmates and of department employees who were involved, a brief narrative of the incident, a brief description of any injuries sustained by anyone involved, and information regarding any criminal charges or disciplinary actions that were filed as a result of the incident. The rest of the submitted information, including the responsive videotape, is excepted from disclosure under section 552.131(a).

You also claim that the information in question is excepted from disclosure under section 552.107 of the Government Code in conjunction with the decision of the federal court in *Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980), *aff'd in part and rev'd in part*, 679 F.2d 1115, *amended in part and vacated in part, reh'g denied*, 688 F.2d 266 (5<sup>th</sup> Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983). Section 552.107(2) provides that information is excepted from required public disclosure if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). The Stipulated Modification of the Amended Decree in the *Ruiz* case restricted the dissemination of "sensitive information" regarding inmates. *See* Open Records Decision No. 560 (1990). However, the final judgment in *Ruiz*, entered on December 11, 1992, gave the Texas Board of Criminal Justice (the "board") authority to define the term "sensitive information." On January 21, 2000, the board met and, acting under the authority of the final judgment in *Ruiz*, determined that "the term 'Sensitive Information' shall include all information regarding TDCJ-ID offenders not required to be disclosed pursuant to Section 552.029, Government Code." Thus, the board has determined that information that is within one of the categories delineated in section 552.029 of the Government Code is not "sensitive information" that the department may withhold from the public under section 552.107(2) in conjunction with the *Ruiz* decision. Therefore, basic information about a use of force or an alleged crime involving an inmate is not excepted from disclosure under section 552.107 of the Government Code and must be released in accordance with section 552.029(8).

In summary, disclosure of responsive medical records is governed by the Medical Practice Act. Basic information about the use of force (and, if it was an alleged crime involving an inmate, the assault on the correctional officer) is subject to disclosure in accordance with section 552.029(8) of the Government Code. Basic information that is subject to disclosure under section 552.029 does not constitute sensitive information that may be withheld from the public under section 552.107(2) of the Government Code. The rest of the submitted information is excepted from disclosure under section 552.131(a) of the Government Code. As we are able to make a determination under sections 552.131 and 552.029 and section 552.107(2), we need not address your claims under sections 552.101 and 552.117.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

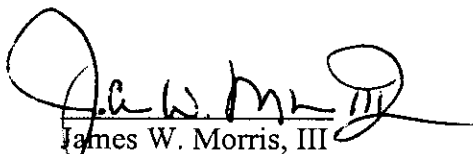
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ljp

Ref: ID# 137420

Encl. Submitted documents

cc: Mr. Mike McCarty  
Cobra Investigations  
121 S. Broadway, Suite 618  
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(w/o enclosures)